

Issue Paper Number 99-022



BOARD OF EQUALIZATION  
**KEY AGENCY ISSUE**

- ☐ Board Meeting
- ☐ Business Taxes Committee
- ☐ Customer Services Committee
- ☐ Legislative Committee
- ☒ Property Tax Committee
- ☐ Technology & Administration Committee
- ☐ Other

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## **BOARD ASSESSMENT OF ELECTRIC GENERATION FACILITIES REQUIRED TO OPERATE UNDER A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY (CPCN)**

### **I. Issue**

How should the Board implement its decision to use a CPCN criteria with respect to the assessment of electric generation facilities?

### **II. Staff Recommendation**

As the Board's decision to use a CPCN criteria to assess electric generation facilities is a continuation of prior policy, staff believes that a new rule is not necessary.

### **III. Other Alternative(s) Considered**

1. The Board can define its authority through the rulemaking process and adopt a rule applicable to the electric generation industry, providing for Board assessment of companies owning electric generation facilities and required to operate pursuant to a CPCN issued by the California Public Utilities Commission (CPUC).

## **IV. Background**

The Board has considered the issue of the assessment of companies owning electric generation facilities post AB-1890 (Stats. 1996, ch. 854) in Issue Papers 98-032, 99-001 and 99-016, incorporated by reference. The Property Tax Committee Meeting convened on April 21 and recommended to the Board that a CPCN/CPUC alternative be used to determine the assessment of electric generation facilities. The recommendation was adopted at the April 22, 1999 Board meeting.

Briefly, AB 1890 provides for the restructuring of the electric utility industry. Article XIII, section 19 of the California Constitution provides that the Board shall assess companies transmitting or selling electricity. The Board has the authority to determine its own jurisdiction; for electric generation facilities impacted by AB 1890, the Board has chosen as a criteria for state assessment the “bright-line test” of whether the facility is required to operate under a CPCN. In making this decision, the Board has delegated to the county assessor, the assessment of electric generation facilities not required to operate pursuant to a CPCN provided that the facility is not otherwise subject to state assessment. Pursuant to this decision, there will be local assessment for: (1) facilities which will be built without the requirement of a CPCN; (2) facilities which were originally built with a CPCN but which are acquired by companies not required to obtain a CPCN; and (3) existing facilities which were built by companies not required to obtain a CPCN.

## **V. Staff Recommendation**

### **A. Description of Staff Recommendation**

Under the staff recommendation, the Board would not adopt a new rule because a new rule is unnecessary. The CPCN criteria would apply as a continuation of the Board’s past practice as approved by a decision of the Attorney General (29 Ops. Cal. Atty. Gen. 77). Companies operating generation facilities without a CPCN have been locally assessed in the past and would continue to be locally assessed. The only shift from state assessment to local assessment would be for those facilities originally built by companies with a CPCN and subsequently acquired by companies not required to obtain a CPCN.

### **B. Pros of Staff Recommendation**

- Consistent with public policy to reduce the number of administrative regulations.

### **C. Cons of Staff Recommendation**

- The absence of a rule may lead to some uncertainty.

## **D. Statutory or Regulatory Change**

No statutory change is required.

## **E. Administrative Impact**

Board workload would remain relatively unchanged since the number of state assessees would not change materially from the current level.

## **F. Fiscal Impact**

### **1. Cost Impact**

State administrative costs would not be significantly affected.

### **2. Revenue Impact**

No revenue effect.

## **G. Taxpayer/Customer Impact**

Questions regarding Board policy are routinely addressed by staff through Letters to Assessors (LTAs) and other documents.

## **H. Critical Time Frames**

It is important that the issue of assessment jurisdiction be resolved before lien date 2000.

# **VI. Alternative 1**

## **A. Description of Alternative**

The Board can define its jurisdiction through the rulemaking process. The following language is proposed:

For purposes of Article XIII, section 19 of the California Constitution, a company selling electricity and owning an electric generation facility shall be state assessed if it is required to have a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission (CPUC). In defining its authority under this constitutional provision, the State Board of Equalization has determined that it is in the public interest pursuant to AB 1890 (Stats. 1996, ch. 854) that other electric generation facilities shall be locally assessed unless otherwise subject to state assessment.

The next step in the rulemaking process would be for the Board to authorize a rule for publication.

**B. Pros of Alternative**

- The rulemaking process allows for public input; a rule would state the Board's policy.

**C. Cons of Alternative**

- If a rule is unnecessary, there is no need for its adoption.

**D. Statutory or Regulatory Change**

No statutory change is required for assessment jurisdiction.

**E. Administrative Impact**

Board workload would remain relatively unchanged since the number of state assesses would not change materially from the current level.

**F. Fiscal Impact**

**1. Cost Impact**

State administrative costs would not be significantly affected.

**2. Revenue Impact.**

No revenue effect.

**G. Taxpayer/Customer Impact**

A rule provides direction to the public.

**H. Critical Time Frames**

If a rule is adopted, it should be in place before lien date 2000. To meet this deadline, the Board would have to adopt a rule and submit it to the Office of Administrative Law (OAL) no later than October 1, 1999.

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